

# **INDIANA DEPARTMENT OF STATE REVENUE**

## **RULING #2001-12IT**

**November 13, 2001**

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

### **ISSUES**

Gross Income Tax – Consolidated Gross Income Tax Return

Authority: IC 6-2.1-1-16, IC 6-2.1-5-5, IC 6-2.1-4-6

The taxpayer requests the Department to rule on the following issues:

1. Whether or not the taxpayer and two of its solely owned limited liability companies may file consolidated gross income tax returns;
2. Whether or not the taxpayer may deduct receipts received from the two solely owned limited liability companies on those returns; and
3. Whether or not the solely owned limited liability companies may deduct receipts received from the taxpayer or from each other on those returns.

### **STATEMENT OF FACTS**

The taxpayer is engaged in the business of manufacturing and is headquartered outside Indiana. The taxpayer is a Delaware corporation authorized to do business in Indiana. The taxpayer currently files an Indiana gross income tax return on a consolidated basis with two affiliates.

On November 1, 2000, the taxpayer formed two single member limited liability companies, hereinafter "SMLLC#1 and SMLLC#2". The taxpayer transferred to SMLLC#1 and SMLLC#2 certain intangible properties. The taxpayer is the sole owner and sole member of both SMLLCs. The SMLLCs each "checked the box" to be taxed as a corporation for federal tax purposes. SMLLC#1 and SMLLC#2 will each obtain a certificate of authority to transact business in Indiana if this ruling dictates same.

SMLLC#1 and SMLLC#2, while each meeting the definition of a taxpayer under IC 6-2.1-1-16 for gross income tax purposes, are not expected to have any receipts derived from Indiana sources.

### **DISCUSSION**

Pursuant to IC 6-2.1-1-16(27), SMLLC#1 and SMLLC#2 are “taxpayers” for gross income tax purposes, because they are not disregarded entities, but instead are taxable as corporations for federal income tax purposes. As such, they will be treated and taxed for gross income tax purposes in the same manner as corporations are treated and taxed. For Indiana income tax purposes, limited liability companies are classified the same as they are for federal income tax purposes. (Tax Policy Directive #2)

IC 6-2.1-5-5 allows Indiana corporations or corporations that are authorized to do business in Indiana and that are members of an affiliated group to file a consolidated gross income tax return. As noted above, the taxpayer is already authorized to do business in Indiana and SMLLC #1 and SMLLC#2 intend to obtain a certificate of authority to do business in Indiana. Furthermore, the taxpayer, SMLLC#1 and SMLLC#2 are clearly affiliated in that the taxpayer owns 100% of SMLLC #1 and 100% of SMLLC#2. SMLLC#1 and SMLLC#2 are also affiliated because “every corporation affiliated with another corporation is affiliated with every corporation that is affiliated with such other corporation [and] all corporations so affiliated constitute an affiliated group.” IC 6-2.1-5-5(a).

Accordingly, assuming for purposes of this ruling request that the taxpayer, SMLLC#1 and SMLLC#2 are authorized to do business in Indiana, they will meet the requirements to file a consolidated gross income tax return.

IC 6-2.1-4-6 provides that a group of affiliates filing a consolidated return is entitled to deduct from its gross income inter-affiliate receipts. Therefore, on the consolidated gross income tax return, the taxpayer will be permitted to deduct receipts from SMLLC#1 and SMLLC#2. SMLLC#1 and SMLLC#2, even though they are not expected to have any income derived from Indiana sources, will be entitled to deduct on that return receipts they might receive from the taxpayer and from each other.

### **RULINGS**

The Department rules that to the extent SMLLC#1 and SMLLC#2 are authorized to do business in Indiana:

1. The taxpayer, SMLLC#1 and SMLLC#2 may file consolidated gross income tax returns;
2. The taxpayer may deduct receipts received from SMLLC#1 and SMLLC#2 on those returns; and

3. SMLLC#1 and SMLLC#2 may deduct receipts received from the taxpayer or from each other on those returns.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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